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# Mabel A. Bench v. The Equitable Life Assurance Society of The United States : Respondent's Brief

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# IN THE SUPREME COURT OF THE STATE OF UTAH

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MABEL A. BENCH,

*Plaintiff and Appellant,*

vs.

THE EQUITABLE LIFE ASSUR-  
ANCE SOCIETY OF THE UNITED  
STATES, a corporation,

*Defendant and Respondent.*

Case No.  
11105

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## RESPONDENT'S BRIEF

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Appeal from Order of Dismissal of the Third  
Judicial District Court for Salt Lake County,  
Honorable Stewart M. Hanson, Judge

---

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**FILED**

MAY 3 - 1968

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Clerk, Supreme Court, Utah

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---

## RESPONDENT'S BRIEF

---

### STATEMENT OF THE NATURE OF THE CASE

This is a suit brought to recover on certain policies of life insurance and by amendments to the complaint, to recover on certain policies of disability and hospitalization insurance.

### DISPOSITION IN LOWER COURT

At the pretrial hearing the court entered an order setting forth the respondent's defense that, as a matter of law, coverage under Policy 5311848 lapsed on the thirty-first day following termination from employment

and *directed* respondent to file a motion for summary judgment so that the Law and Motion Division of the court might rule on the validity of this defense. The pretrial judge expressly declined to rule on such defense which was set forth in the pleadings and was raised at the pretrial hearing. The pretrial court gave the appellant leave to amend her complaint to allege a cause of action on two additional policies, one being a policy providing medical and surgical benefits and the other, a disability policy.

Pursuant to such leave of the pretrial court, the appellant elected to file an amended complaint, setting forth the two causes of action alleged in the original complaint, the two causes of action on the above-mentioned policies and a catch-all provision wherein liability is alleged on "any other insurance or benefit policies."

In accordance with the direction of the pretrial judge, respondent filed a motion to dismiss the amended complaint, which motion was granted. The Law and Motion Division of the lower court dismissed the complaint without prejudice. Thereafter, appellant filed a second amended complaint and on the same day, submitted interrogatories to the respondent. The second amended complaint, aside from an allegation that "all required notice of death and the plaintiff's claim was given to the defendant, and all condition precedent to plaintiff's demands and to defendant's liability to plaintiff duly performed," is not materially different from the amended complaint. A second motion to dismiss was filed and upon hearing, the Law and Motion Division of the lower

court granted the motion to dismiss and said dismissal was entered with prejudice. Because of the order of dismissal, the interrogatories referred to above were not answered.

## RELIEF SOUGHT ON APPEAL

Affirmance of the order of dismissal of the lower court.

## STATEMENT OF FACTS

The original complaint as well as the amended and second amended complaints allege that the appellant is the surviving widow of Leland E. Bench and that the said Leland E. Bench died on July 1, 1963. The complaints also allege that the said Leland E. Bench was terminated from employment by Ajax Press Company on April 26, 1963. The original complaint sought recovery on "*a group life insurance policy.*" (R-1)

By answer, the respondent set forth the numbers of two group life insurance policies as well as pertinent provisions thereof and subsequently furnished reconstructed copies of such policies to the appellant's attorney.

On the question of the decedent's disability, it appears from the appellant's deposition that he suffered an injury while on the job. "He had bumped his left leg on a piece of pipe or something they had worked on down there." (Page 4 of appellant's deposition.) This "bump" according to appellant's deposition caused him to have an infection and completely incapacitated him.

The "bump" is also described as 2½ inches long and "it looks like it would be about between a half inch or three-quarters of an inch deep, something like that. It was quite deep." (Appellant's deposition, Page 18.) Appellant further testified in her deposition that the leg was bleeding at the time her husband came home from work, that she put clean bandages on it, but that her husband did not see a doctor. This injury occurred on Monday and her husband returned to work the following Friday, April 26, 1963. On that day, his employment was terminated. The appellant's deposition continues to the effect that for another week, her husband, the decedent, was totally disabled and remained bedridden until he was admitted to the County Hospital as an out-patient on either the 2nd or 5th of May, 1963. From the initial visit at the County Hospital until the Thursday before the first of July, the decedent was treated on an out-patient basis, initially every week, and subsequently, every two weeks. On the Thursday before July 1, 1963, the insured was admitted as a patient at the hospital and died on July 1, 1963.

It was only with the filing of the amended complaint that respondent was apprised that the appellant was claiming anything by virtue of the hospital-medical policy or the disability policy. Appellant endeavors to make much of the fact that the respondent refused to divulge the existence of these latter policies. As will appear in the Argument hereafter, respondent had no reason to believe that such policies were pertinent or had any bearing on the matters set forth in the complaint.



## ARGUMENT

### POINT I

IN CONSIDERING THE MOTION TO DISMISS, THE LAW AND MOTION DIVISION FOLLOWED THE PRETRIAL ORDER.

Appellant's argument on Point I proceeds from a false premises: That the Law and Motion Division ignored the pretrial order. Respondent respectfully submits that the pretrial order speaks for itself and constitutes simply a delineation of the issues by the pretrial judge as such issues were reflected by the pleadings before the pretrial court. As revealed by the pretrial order itself, the judge declined to pass on questions of law and took the position that it was incumbent on the parties to "exhaust the remedy" of a motion for summary judgment before the Law and Motion Division.

In ruling on the motion to dismiss, the Law and Motion Division of the lower court did not ignore the pretrial order since the pretrial order did not purport to pass upon any questions of law or fact but merely set forth the issues as they appeared from the pleadings which were then on file.

### POINT II

DISMISSAL OF THE FIRST CAUSE OF ACTION WAS PROPER AS A MATTER OF LAW.

The appellant combines the arguments against dismissal of the various counts of the second amended complaint. Respondent submits that since each count of

the complaint presents differing legal or factual questions, the arguments may more properly be made under separate headings.

Policy Number 5311848 is the group life insurance policy referred to in the First Cause of Action. The appellant quotes a portion of the language from this policy and we respectfully refer the Court to the policy itself for the full language thereof with respect to conversions and, also, terminations. This language appears on the white photostatic copy pages, the page bearing a penned number 9 in the lower right-hand corner.

There is no dispute as to the fact of termination of employment. The appellant has alleged in three complaints that the decedent was terminated from employment and testified in her deposition that the deceased received a blue slip and was terminated from employment. There is no question that the insured died more than thirty-one (31) days following termination from employment. We respectfully submit that the contract is unambiguous and clear. As a matter of law, it must be held that all insurance coverage under Policy 5311848 had ceased and terminated at the date of insured's death.

The appellant cites cases dealing with extension provisions and termination rights and the respondent does not quarrel with the rules of law laid down in such cases. The case of *Powell vs. Equitable Life Assurance Society*, 173 S. C. 50, 174 S.E. 649, involves a question

of temporary lay-offs. The principal issue in that case was whether the insured was still employed at the date of her death or whether she was on a temporary lay-off.

In *Equitable Life Assurance Society vs. Hoover*, 187 Okla. 134, 101 P.2d 632, the death of the employee occurred during the thirty-one day period for conversion of the policy to other insurance. That policy, differing from the one here involved, did not expressly provide that coverage ceased on the thirty-first day following termination. The court simply held that during the thirty-one day conversion period, there was an extension of coverage. No doubt, the respondent here who was the defendant in the Hoover case drafted Policy Number 5311848 with the decision of that case in mind since the extension expressly coincides with the conversion period.

Likewise the case of *Atlas Life Insurance Company vs. Miles*, 195 Okla. 645, 161 P.2d 1022, involves a situation where the insured died during the conversion period. On the authority of the Hoover case, the result was the same.

Also, in the case of *Shanks vs. Travelers Insurance Company*, (Okl. D.C.), 25 F.Supp. 740, the situation involved a death during the thirty-one day conversion period. In the Shanks case, the employee died the day following her termination from employment and the court held, as in the previous cases, that the thirty-one day conversion period effected an extension of coverage.

The case of *Sturmer vs. Travelers Insurance Company*, 279 Illinois App. 607, is a situation where the sole issue was whether the decedent had been temporarily laid off or whether he was terminated from employment. In argument following the citation of this case, appellant is apparently contending for the first time that there is a question in this case whether the decedent was terminated from employment. This, notwithstanding the allegation of termination contained in three complaints and appellant's testimony in her deposition as to termination of employment. We respectfully urge that this case must be confined to the record before the Court. There is no issue on the question of whether Leland Bench was terminated from employment. It has been so alleged and the allegation is admitted.

We would make the same comment with respect to the case of *Travelers Insurance Company vs. Fox*, 155 Md. 210, 141 Atl. 547, which is cited by appellant. Such, also, is the burden of the case of *Peters vs. Aetna Life Insurance Company*, 279 Mich. 663, 273 N.W. 307. It should be pointed out that all of these cases involve a factual question as to whether decedent was laid off temporarily or was terminated, and the death occurred within a period of not less than thirty-one days.

As appears from the foregoing review, the cases cited by appellant fall into two categories. One group of cases holds that where there is a question as to whether the insured was terminated from employment, there is a question of fact, and some of the cases hold

that the burden of proving a termination is on the insurance company. There is no such factual question in this case.

The other group of cases holds that there is insurance coverage during a thirty-one day conversion period provided by the policy. That is not denied in this case since the policy itself expressly provides that the insurance shall remain in force for thirty-one days following the employee's termination.

We note the interesting argument advanced by appellant that since there is a thirty-one day period within which to convert the policy to permanent insurance and the policy is in force during that period by express provisions, a reasonable time should be allowed thereafter. No cases are cited in support of such a novel contention and in view of the express provisions of the policy, we submit that no such cases exist. We also note the proposed inference that the decedent would have exercised this conversion privilege had he been notified thereof or had knowledge of the same. Regarding the matter of the decedent's knowledge of coverage, the appellant, in her deposition, states that she had a certificate of life insurance. (Appellant's deposition, Page 16). It would be immaterial whether the certificate in appellant's possession was on Policy 5311848 or 0486, since both certificates set forth substantially identical conversion privileges.

### POINT III

DISMISSAL OF THE SECOND CAUSE OF ACTION  
WAS PROPER. THERE WAS NO ISSUE OF FACT  
ON WHICH REASONABLE MINDS MIGHT DIFFER.

The Second Cause of Action involves Policy Number 0486A and we respectfully refer the Court to the copy of the policy produced, the page with the notation in the right-hand corner, number 27, which contains an extended death benefit. The provision states that:

“If due proof of the death of an employee shall be submitted in writing to the Society within one (1) year after the death of such employee whose insurance hereunder shall have terminated due to termination of employment in accordance with the provisions hereof entitled ‘Individual Terminations,’ the Society will pay to the person or persons entitled thereto under the provisions of this policy the amount of the insurance for which such employee’s life was last insured under this policy, provided due proof shall be furnished to the Society that \* \* \*. At the date of such termination of employment, such employee was totally disabled by bodily injury or disease so as to be prevented from engaging in any occupation for compensation or profit and that such total disability continued from such termination of employment to such death \* \* \*.”

The ommitted provisions of the extended death benefit clause are not applicable to the instant case.

Looking now to the evidence before the trial court regarding disability, we refer to appellant’s deposition, Page 4, Line 11,

“Q. What was Mr. Bench’s state of health at that time?

“A. He bumped his left leg on a piece of pipe or something they had worked on down there.

"Q. That would be on the job?

"A. On the job.

"Q. What was the affect of the bump?

"A. It caused him to have infection. It was inflamed.

"Q. When did this accident occur? How long before his termination?

"A. Monday before termination.

"Q. Do you know whether Mr. Bench made a report of this occurrence to anyone at Ajax Presses?

"A. Yes, he made a report to the — what do you call them — it was something to do with your health and accident, something like that.

"Q. Do you know the name of the —? You don't know the name of the individual, do you?

"A. I can't think of it.

"Q. Would it be Mr. Blake, the personnel manager?

"A. No, it was not Mr. Blake. It was the one for the —.

"Q. It would be the — some person who had to deal with safety.

"A. It is some person they had to deal with safety — yes.

"Q. Safety or first-aid measures?

"A. Yes.

"Q. Did Ajax Presses have a company doctor for the employees?

"A. Dr. Burnham.

"Q. Dr. Burnham. Did your husband consult Dr. Burnham after his accident?

"A. After he got the blue slip, he wasn't entitled to.

"Q. Did he consult Dr. Burnham after the accident?

"A. No. He got the blue slip.

"Q. Do you know the day of the week the blue slip was given to him?

"A. Friday.

"Q. So that the accident occurred on Monday but you didn't consult Dr. Burnham between that time and the end of the week?

"A. No. He couldn't get an appointment.

"Q. Did he work the rest of the week? From Monday until Friday?

"A. No, he did not.

"Q. What was the condition of Mr. Bench's leg that this bump would cause such difficulty, Mrs. Bench?

"A. Just started infected and blood poison."

Giving further details of the nature and extent of the injury on Page 7, Line 6,



"Q. Did he show you a bruise or cut on his leg?

"A. Yes, sir.

"Q. Did you see his leg?

"A. Yes.

"Q. Was there a cut there?

"A. There was a cut.

"Q. First of all, which leg was it on, Mrs. Bench?

"A. The left leg.

"Q. His left leg?

"A. Yes.

"Q. About where on the left leg, Mrs. Bench?

"A. Just a little west — left of his shin bone.

"Q. How high up on the leg from the ankle would it be?

"A. About where you have your hand. Would that be, say, a foot from the floor? My judgment of measurements that way is no good."

Apparently, appellant is somewhat confused about the activities of her deceased husband following the injury since at Page 12, Line 30:

"Q. I may have asked you this before, Mrs. Bench, but I am not certain of it: Between the time of the accident which took place on Monday, April 26, which you say was a Friday, did your husband work continuously his regular shift at Ajax?

"A. Oh, yes.

“Q. But you are not sure whether it was during that period or after the termination that this man called to talk to you about the accident or called on your husband?

“A. No, I don’t. Mr. Bench showed him his leg and he said it was an awfully nasty looking leg.”

On cross-examination, appellant went into considerable more detail regarding the extent and nature of the injury, stating at Page 18:

“It is about two and a half inches long. It looks like it would be between a half-inch or three-quarters of an inch deep, something like that. It was cut quite deep.

“Q. Through the skin?

“A. Yes.

“Q. Had he had it dressed at that time?

“A. No.

“Q. Any bandage over it?

“A. No. He came right home.

“Q. It was bleeding.”

Continuing on Page 19, Line 5,

“Q. Did he got to work the following day?

“A. No, sir.

“Q. When did he next go to the plant?

“A. The following Friday.

“Q. What time did he leave then?

“A. He left at 6:30 in the morning to get down there at 7:00 a.m.

“Q. What time was he back?

“A. Back about — not — about 8:30.

“Q. The reason for his not going to work between those times — Monday and Friday — was what?

“A. He injured his leg.

“Q. When he went to the plant on Friday, did he go back to work or something else?

“A. He went back to go to work even if he had a bad leg.

“Q. Is that when he got the blue slip?

“A. Yes.”

It appears from the deposition that the decedent had been in good health prior to the accident in question since “We would go out fishing and the like. We would go out fishing and hiking around.” (Appellant’s deposition, Page 15, Lines 6 and 9.)

To summarize appellant’s testimony regarding the nature and extent of the injury, it appears that the decedent suffered a cut approximately two and one-half inches long and from one-half to three-quarters of an inch deep on one leg. Whether he worked on Tuesday, Wednesday and Thursday of the week this injury was sustained is immaterial. On Friday, he felt sufficiently well so that he dressed himself and went to work. Upon reporting for work, he was advised that he was dis-

charged and given his separation notice referred to in the deposition as a "blue slip." Thereupon, decedent returned home, took himself to his bed until such time as he could qualify to get on the welfare rolls and subsequently, reported to the County Hospital as a welfare patient for treatment.

Upon such state of the evidence, the Court is asked to believe that this injury of a type and severity such as might have been readily treated with a bandaid completely incapacitated and disabled the decedent, making it impossible for him to engage in any occupation for compensation or profit from the 26th of April continuously until the first day of July, at which time he died. The respondent respectfully submits that such view of the evidence is absolutely incredulous. Reasonable minds could not differ that such injury as is described in detail in appellant's deposition could not have resulted in total disability for such an extended period of time. This view of the evidence coincide with the deceased's own conduct. Four days after the injury, he felt sufficiently recovered to dress himself and report for work. Obviously, the deceased did not consider himself totally disabled on Friday, April 26, 1963, the day he was discharged. Neither did Larry Blake, the Personnel Manager at Ajax Presses, who twice visited the Bench home, as set forth in Mr. Blake's affidavit (R. 56-57). Appellant now asks this Court, in the face of such evidence and the behavior of the deceased himself, to hold that on Friday, April 26, the decedent was totally disabled.

This Court has many times considered the scope of review upon an appeal from granting a summary judgment. Apparently, the last of such cases is that of *Jose F. Montoya vs. Berthana Investment Corporation, et al*, DECIDED April 17, 1968, wherein this Court, upon reviewing the pleadings, states

“These were allegations — not proof. By employing the discovery process under the rules, by affidavit and interrogatories directed to each party by the other, there developed a clear departure from pleading and proof, that precipitated no genuine issue of fact, but one of law based on the evidence submitted by both parties before trial.”

A summary judgment of dismissal was affirmed. The burden of the cases would appear to be that the state of evidence must be such from pleadings, depositions, affidavits, and any other evidentiary matters before the trial court, that reasonable minds might not differ as to the conclusion which would be reached. For, as said in *Whitman vs. W. T. Grant Company*, 16 U.2d 81, 395 P.2d 918,

“We are not persuaded that the trial court was in error in concluding that all reasonable minds would agree \* \* \*.”

Or, as stated in *Thompson vs. Ford Motor Company*, 16 U.2d 30, 395 P.2d 62,

“Therefore, if there is any *reasonable* basis in the evidence upon which reasonable minds could conclude that they are not so persuaded on either of these issues, they should be submitted to trial by jury \* \* \*.” (Emphasis added.)

As stated conversely in the case of *Robison vs. Robison*, 16 U.2d 2, 394 P.2d 876,

“It is our opinion that these are questions about which there is sufficient uncertainty that *reasonable minds might differ as to their conclusions thereon*. It follows that the plaintiff should be afforded the opportunity he seeks of presenting the disputed issues in the case to a jury for determination.” (Emphasis added.)

It is clear from this Court's decisions that the pleadings alone are not sufficient to raise an issue of fact in opposition to affidavits or depositions. *Continental Bank & Trust Company vs. Cunningham*, 10 U.2d 329, 353 P.2d 168; *Dupler vs. Yates*, 10 U.2d 251, 351 P.2d 624.

It is also necessary that there be a *genuine issue of a material fact*. In *re Williams' Estates*, 10 U.2d 83, 348 P.2d 683; *Bullock vs. Deseret Dodge Truck Center, Inc.*, 11 U.2d 1, 354 P.2d 559.

Respondent respectfully submits that the evidence before the trial court, as shown by the record herein, presents a situation where reasonable minds could not differ on the question of the decedent's disability. The affidavit of Larry Blake, together with the appellant's own deposition, clearly overcome the allegations of the pleadings and show beyond hope of refutation that the decedent was not and could not be claimed as being totally disabled on the day he was discharged from employment. Whether he thereupon took himself to his bed and re-

mained there until some later date is immaterial. He must have been continuously disabled from the date of his termination to the date of his death.

Appellant cites several cases on the question of denial of liability by an insurance carrier as constituting a waiver of the requirement that a proof of loss be submitted. Until the filing of the answer to appellant's original complaint, the record contains no denial of liability by the respondent. In each of the cases cited, there was no question that the insurance carrier was notified of a loss and through conduct of its agents or employees, either lead the claimant to believe that there was no necessity for further action and that the claim would be processed in due course or categorically denied liability and advised the claimant that there was no need to submit proof of loss. With the rule of law that such conduct is a waiver of the requirement that a proof of loss be submitted, respondent has no quarrel.

The only evidence in this record of any notice given by the appellant of a claim under the policies is contained in answers to interrogatories, Answer Number 6,

"I was aware of some insurance during Mr. Bench's life. Following his death, I corresponded with Ajax Press Company, *Equitable Life Insurance Company*, and the Utah State Insurance Commission." (Emphasis added.)

Answer Number 8 in response to the question,

"On what date did you notify the defendant of your claim under such policies?

"Within a week after the death of Mr. Bench."

It should be noted that appellant has never specified to whom such "correspondence" was addressed and if, in fact, the same was addressed to the Equitable Life Insurance Company, it was no doubt delivered to that company and not received by this respondent. The appellant, as revealed by the record, has been very reluctant to divulge any information to respondent. We call the Court's attention to the fact that in order to secure answers to the interrogatories and to secure the signing and filing of appellant's deposition, it was necessary for the respondent to file a motion for dismissal based on failure to sign and file the deposition and to answer the interrogatories. (R. 26). At the time this motion was filed, it had been more than one year since the deposition was taken and the interrogatories submitted. The answers were filed the day before the hearing on the motion and the deposition signed and filed sometime after that.

The respondent submits that there is no evidence before the Court either as to notice of a claim given to respondent or as to a denial of liability prior to the filing of this action, either on Policy 0486A or any of the other policies involved in this matter. Respondent further submits that regardless of this defense, as shown by the evidence and pleadings herein, respondent has a good and valid defense to each count of the appellant's second amended complaint and, therefore, the issue as to the giving of notice or denial of liability is not a genuine issue of a material fact.



#### POINT IV

AS A MATTER OF LAW, COUNTS III AND IV OF THE COMPLAINT FAIL TO STATE A CAUSE OF ACTION.

The second amended complaint alleges in Counts III and IV in almost identical language the existence of a policy of hospitalization and medical coverage being Policy 0846H and a disability policy being 0846W. Copies of these policies were produced pursuant to Paragraph 6 of the lower court's pretrial order on June 15, 1967 (R. 43) and are part of the file. These policies are exceedingly bulky since there are attached various provisions covering specific divisions of the group which were insured and provided varying and different benefits for the different insured groups of employees. As set forth in the appellant's brief, it is the respondent's position that claims under both of these policies are barred for failure to comply with the limitation requirements contained therein. The surgical and hospital policy provides that proof and notice of claim must be presented within ninety (90) days after the period of hospitalization, confinement or surgical operation (p. 42). The disability policy provides that proof must be submitted within ninety (90) days (p. 12). References are to written numbers appearing at the bottom of the photographic copies of the policy pages.

Aside, however, from the question of limitations, it is and has been the respondent's position from the outset that the terms of these policies expressly exclude the claim urged by appellant. Referring to Policy 0846H (all references being to the handwritten numbers at the bot-

tom of each page of the photographic copies), Pages 32 through 38, inclusive, contain limitation provisions with respect to hospital and surgical benefits for various classes of insured employees. In each instance and on each of the pages referred to is the provision that no payment shall be made for hospital benefits or surgical benefits incurred due to accidental bodily injuries arising out of and in the course of employee's employment. Similar language appears at Pages 10 and 11 of Policy 0486W. Respondents, therefore, respectfully submits that the terms of the policies themselves exclude the claim now urged on behalf of the decedent who, according to Mrs. Bench's deposition, was injured on the job and such injury resulted in his disability and later hospital confinement and surgical procedures. Injury, disability and hospital confinement arising from such causes are simply excluded from the policy coverage and the employee would be left to his remedy under Workmen's Compensation Act.

In addition, under Policy 0846H, by the terms of the policy itself, coverage is limited to amounts *actually incurred* by the insured. At Page 32 is the provision that there may be paid, following proof of confinement to a hospital "the amount of charges for hospital room and board incurred during such hospital confinement \* \* \*." With regard to surgical benefits, Page 36 contains the language that payment will be made if there is proof of an operation having been performed "for surgical fees incurred for such operation."

The appellant advances an interesting argument to the effect that respondent may not claim as a defense the fact that the decedent actually incurred no hospital and medical expenses and states that any recovery on this cause of action would be turned over to the Salt Lake County Welfare. Were this a tort case, the fact that the appellant and her deceased husband had suffered no monetary loss might well be no defense to respondent. We are here dealing, however, with a contract of insurance which is clear, specific and not subject to any ambiguity. The contract simply does not cover any hospital confinement or surgical operation except charges actually incurred by the insured.

## CONCLUSION

By way of conclusion and to summarize respondent's position:

1. The Law and Motion Division of the lower court followed the Pretrial Order in ruling on respondent's Motion to Dismiss.

2. Dismissal of the First Cause of Action was necessary as a matter of law since all coverage lapsed on the thirty-first day following termination of employment.

3. Dismissal of the Second Cause of Action was proper as there was no material issue of fact on which reasonable minds might differ.

4. Dismissal of Counts III and IV of the second amended complaint as a matter of law was proper since the policy provisions expressly exclude coverage of accidents sustained in the course of employment and disability resulting from such accidents.

We respectfully urge that the Order of Dismissal with Prejudice entered by the lower court should be affirmed with costs to the respondent.

Respectfully submitted,

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